

ETHICS AND INFORMATION LAW: THE INTERFACE

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Synopsis

I. The dominant legal perspective: law as a closed system

Concepts:

- (normative) ethics*: what is right (act) in certain situations
- law*: a formal set of rules defining what is prescribed/forbidden
- "information ethics"* = normative issues surrounding information control
- "information law"* = a narrow definition: copyright, data protection, freedom of speech, Act on Publicity

The dominant view:

- legal positivism: presumption that there is only one right solution that can be found/deducted from the legal system itself (law as a coherent system)
- justification: the autonomy and neutrality of the legal system
- problem: the inevitable conflict between textual logic and situational logic

II. How could ethics and law interact?

- is there space for ethical imagination in law, "the space to see" (Bankowski)

II.1. *Ideals inherent in law*

- the limits of law can be found in law itself
- basic rights and human rights: their ethical dimension
- gaps in statutory law
- copyright as an example: all is not protected ("ethical public domain")
 - no definition what constitutes a "work"
 - copyright protects action, not objects
 - however, only action that is deemed original enough
 - information (ideas/facts) is not protected

II. 2. *Social construction of legal norms*

-law in books – law as interaction

- a) rules of conduct are codified as part of written law: written law follows practice
 - citation rule in the Finnish Copyright Act: "citation is allowed within the limits of *good manners*" ("contra bonos mores")
 - "fair" use in US Copyright Act

b) rules of application: practice follows the law

- self-regulatory norms, all law is not given from "above" (by the state)
- law as a formal system of rules is always incomplete, thus supplemented by sectoral rules of application

III. Ethical challenges of librarianship

-digitisation of information and cultural heritage

-role of professional ethics, is there room for ethical deliberation vis-à-vis other information professionals (researchers, journalists)

-in Finland an attempt to create an own ethical code for libraries: freedom of expression and information as a basic value